

IN THE CIRCUIT COURT OF UNION COUNTY, ARKANSAS

SUMMONS

Plaintiff: ARKANSAS DEPARTMENT OF ECONOMIC DEVELOPMENT AND
ARKANSAS DEVELOPMENT FINANCE AUTHORITY

vs.

Case Number: *CV-09-04666*

Defendants: NORPHLET CHEMICAL, INC., SYSTEMS
CONTRACTING CORPORATION, PHOENIX
EQUIPMENT CORPORATION, THE SHERWIN-
WILLIAMS COMPANY, ESCO ELECTRICAL
SERVICE, INC., CONSOLIDATED ELECTRICAL
DISTRIBUTORS, INC., MICHAEL W. MURPHY II,
TRAC-WORK, INC., TIMBERLAND BANK,
SMACKOVER STATE BANK, RAIN FOR RENT,
LIBERTY SUPPLY, INC., RENTAL SERVICE
CORPORATION, E-TECH, INC. AND THE UNITED
STATES OF AMERICA, ACTING BY AND THROUGH
THE UNITED STATES ENVIRONMENTAL PRO-
TECTION AGENCY

Plaintiff's attorney: James C. Clark, Jr.
400 W. Capitol Ave., Suite 2000
Little Rock, AR 72201-3522

DEFENDANT: **The United States of America, acting through the
United States Environmental Protection Agency
c/o Debbie Groome
Isaac C. Parker Federal Building
30 S. 6th Street
Fort Smith, AR 72902**

NOTICE

1. You are hereby notified that a lawsuit has been filed against you; the relief asked is stated in the attached complaint.

2. The attached complaint will be considered admitted by you and a judgment by default may be entered against you for the relief asked in the complaint unless you file a pleading and thereafter appear and present your defense. Your pleading or answer must meet the following requirements:

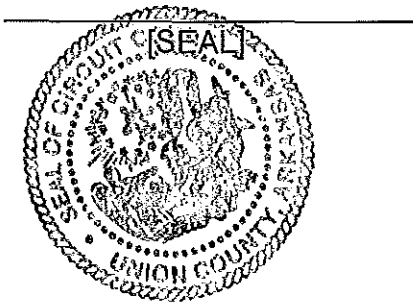
A. It must be in writing, and otherwise comply with the Arkansas Rules of Civil Procedure.

B. It must be filed in the court clerk's office within sixty (60) days from the day you were served with this summons.

3. If you desire to be represented by an attorney you should immediately contact your attorney so that an answer can be filed for you within the time allowed.

Witness my hand and the seal of the court this 25 day of Nov., 2009.

Address of Clerk's Office:



Cheryl Cochran-Wilson
Clerk
By: Zandra Hayes
DC.

IN THE CIRCUIT COURT OF UNION COUNTY, ARKANSAS

ARKANSAS DEPARTMENT OF ECONOMIC
DEVELOPMENT AND ARKANSAS DEVELOPMENT
FINANCE AUTHORITY

PLAINTIFFS

VS.

NO. CV-2009-04666

NORPHLET CHEMICAL, INC., SYSTEMS
CONTRACTING CORPORATION, PHOENIX
EQUIPMENT CORPORATION, THE SHERWIN-
WILLIAMS COMPANY, ESCO ELECTRICAL
SERVICE, INC., CONSOLIDATED ELECTRICAL
DISTRIBUTORS, INC., MICHAEL W. MURPHY II,
TRAC-WORK, INC., TIMBERLAND BANK,
SMACKOVER STATE BANK, RAIN FOR RENT,
LIBERTY SUPPLY, INC., RENTAL SERVICE
CORPORATION, E-TECH, INC. AND THE UNITED
STATES OF AMERICA, ACTING BY AND THROUGH
THE UNITED STATES ENVIRONMENTAL PRO-
TECTION AGENCY

DEFENDANTS

COMPLAINT IN FORECLOSURE

Come the Plaintiffs, Arkansas Department of Economic Development ("ADED") and
Arkansas Development Finance Authority ("ADFA"), and for their joint Complaint against the
Defendants, state:

1. ADED is an agency of the State of Arkansas created pursuant to the provisions of Act
No. 38 of the Acts of Arkansas 1971, and is located at One Capitol Mall, Little Rock, Arkansas
72201.

FILED
11-25-09 @ 1:09 PM
CHERYL COCHRAN - WILSON, CLERK
BY [Signature] D.C.

2. ADFA is an agency of the State of Arkansas created pursuant to the provisions of Act No. 1062 of the Acts of Arkansas 1985, and is located at 423 Main Street, Suite 500, Little Rock, Arkansas 72201.

3. Norphlet Chemical, Inc. ("Norphlet") is a corporation organized and existing pursuant to the laws of the State of Arkansas with its principal and only place of business in Arkansas located in Norphlet, Union County, Arkansas and whose registered agent is John L. Garrison, 600 MacMillon, Norphlet, Arkansas 71759.

4. Systems Contracting Corporation, Inc. is a corporation organized and existing under the laws of the State of Arkansas and whose registered agent for service of process is Ian W. Vickery, 200 N. Jefferson, Suite 516, El Dorado, Arkansas.

5. Phoenix Equipment Corporation is a corporation organized and existing pursuant to the laws of a state other than Arkansas doing business in Union County, Arkansas.

6. The Sherwin-Williams Company is a corporation organized and existing pursuant to the laws of the State of Ohio that does business in Arkansas and whose registered agent for service of process is Corporation Service Company, 300 Spring Street, Suite 900, Little Rock, Arkansas 72201.

7. ESCO Electrical Service, Inc. is a corporation organized and existing pursuant to the laws of Arkansas and whose registered agent for service of process is Glenn Sams, 520 E. Main Street, El Dorado, Arkansas 71730.

8. Consolidated Electrical Distributors, Inc. is a corporation organized and existing pursuant to the laws of the State of Delaware that does business in Arkansas and whose registered

agent for service of process is The Corporation Company, 124 W. Capitol, Suite 1900, Little Rock, Arkansas 72201.

9. Michael W. Murphy II is a citizen and resident of Union County, Arkansas.
10. Trac-Work, Inc. is a corporation organized and existing pursuant to the laws of the State of Texas, and whose registered agent in the State of Arkansas is The Corporation Company, 124 W. Capitol, Suite 1900, Little Rock, Arkansas 72201.
11. Timberland Bank is a bank chartered under the laws of the State of Arkansas with its principal place of business in El Dorado, Arkansas.
12. Smackover State Bank is a bank chartered under the laws of the State of Arkansas with its principal place of business in Smackover, Arkansas.
13. Rain for Rent is a corporation organized and existing pursuant to the laws of a state other than Arkansas doing business in Union County, Arkansas.
14. Liberty Supply, Inc. is a corporation organized and existing pursuant to the laws of the State of Arkansas with its principal place of business in Magnolia, Columbia County, Arkansas.
15. Rental Service Corporation is a corporation organized and existing pursuant to the laws of a state other than Arkansas doing business in Union County, Arkansas.
16. E-Tech, Inc. is a corporation organized and existing pursuant to the laws of a state other than Arkansas.
17. The United States Environmental Protection Agency is an agency of the United States of America.

COUNT I

18. On or about December 13, 2005, for valuable consideration, and in accordance with the Loan Agreement, attached hereto as Exhibit A, between Norphlet and City of Norphlet, Arkansas (the "City"), Norphlet executed that certain promissory note (the "Note") to the City in the amount of \$1,500,000 bearing interest as set forth in said Note, a copy of which is attached as Exhibit B and made a part hereof. By the terms of said Note, Norphlet agreed to pay attorneys fees, not to exceed ten percent (10%) of the unpaid principal plus all accrued interest, and all costs and expenses of collection, in the event the Note should be placed in the hands of an attorney for collection.

19. For the purpose of securing payment of the Note, Norphlet executed, acknowledged and delivered to the City an Arkansas Mortgage (the "Mortgage"), conveying the following described real property (the "Real Property") lying in Union County, Arkansas, to wit:

Commencing at the Southwest Corner of the Southwest Quarter of the Southeast Quarter (SWC or SW/4 SE/4) of Section 21, Township 16 South, Range 15 West, Union County, Arkansas, and run thence North 26 degrees 58 minutes 55 seconds West 43.74 feet along a fence; thence North 13 degrees 43 minutes 47 seconds West 38.76 feet along a fence; thence North 02 degrees 24 minutes 08 seconds West 380.57 feet along a fence to a fence corner; thence North 45 degrees 00 minutes 58 seconds West 20.84 feet along the fence to a fence corner; thence North 83 degrees 54 minutes 57 seconds West 119.62 feet along a fence to a fence corner; thence North 03 degrees 58 minutes 52 seconds East 366.40 feet along a fence; thence North 06 degrees 17 minutes 16 seconds East 159.80 feet along a fence; thence North 63 degrees 53 minutes 57 seconds West 269.45 feet; thence North 24 degrees 15 minutes 28 seconds East 487.73 feet to the Southerly right-of-way of the Missouri Pacific Railroad; thence South 50 degrees 13 minutes 30 seconds East 485.12 feet along said right-of-way; thence along said right-of-way around a curve to the right, having a radius of 2770.44 feet and a length of 1452.53 feet; thence South 20 degrees 11 minutes 15 seconds East 1559.56 feet along said right-of-way; thence leaving said right-of-way, North 87 degrees 52 minutes 21 seconds West 985.46 feet along a fence to a fence corner; thence South 01 degree 36 minutes 29 seconds West 700.00 feet along a fence to a fence corner; thence South 87 degrees 52 minutes 21 seconds East 736.55 feet along a fence and its extension to the East line of the Southwest Quarter of the Northeast Quarter of Section 28, Township 16 South, Range 15 West;

thence South 00 degrees 38 minutes 41 seconds West 591.51 feet to the Southeast Corner of said Southwest Quarter of the Northeast Quarter; thence North 89 degrees 00 minutes 04 seconds West 1319.85 feet to the Southwest Corner of the said forty; thence North 00 degrees 43 minutes 15 seconds East 1317.37 feet to the Northwest Corner of the said forty; thence North 00 degrees 43 minutes 15 seconds East 1317.37 feet to the point of beginning.

LESS AND EXCEPT:

Beginning at the Southwest Corner of the Northeast Quarter of the Northeast Quarter (SWC or NE/4 NE/4) of Section 28, Township 16 South, Range 15 West, Union County, Arkansas, and run North 01 degree 30 minutes East along the West line of the said forty 710.36 feet to the West right-of-way line of the Missouri Pacific Railroad; thence South 20 degrees 21 minutes East along the said right-of-way line 767.3 feet to the South line of said Northeast Quarter; thence North 88 degrees 08 minutes West along the said South line 285.45 feet to the point of beginning.

The Mortgage was duly filed of record in Union County, Arkansas on December 13, 2005 in Mortgage Book 2005 at page 22193, in the office of the Circuit Clerk and Ex-Officio Recorder of Union County, Arkansas. A copy of the Mortgage is attached hereto as Exhibit C and made a part hereof by reference.

20. On the 15th day of December, 2005, for good and valuable consideration, the City assigned, set over and transferred to ADED all of its right, title and interest in and to the Loan Agreement, Note and Mortgage ("Assignment"). The Assignment was duly filed of record in Union County, Arkansas on December 15, 2005 in Mortgage Book 2005 at page 22287 in the office of the Circuit Clerk and Ex-Officio Recorder of Union County, Arkansas. A copy of the Assignment is attached hereto as Exhibit D and made a part hereof by reference.

21. ADED, pursuant to an Intercreditor Agreement between ADED and ADFA dated September 22, 2006, a copy of which is attached hereto as Exhibit E and made a part hereof,

participates *pari passu* in this litigation with ADFA and in the net proceeds derived by ADED and ADFA from this cause of action.

22. Payment under the Note is in default and although demand for payment has been made, the indebtedness evidenced by said Note remains past due and unpaid.

23. Pursuant to the maturity acceleration provisions of the Note, ADED and ADFA elect to declare the entire balance, the principal and accrued interest on the Note, due and payable.

24. As of the date of the filing of this Complaint, there is past due and owing under the Note principal in the amount of \$1,393,816.31, accrued but unpaid interest in the amount of \$220,372.77, together with interest accruing at the rate of \$190.93 per day from the date of the filing of the Complaint until paid.

25. By virtue of the default in the Note, ADED and ADFA are entitled to a judgment against Norphlet in the amount of \$1,614,189.08, bearing interest at the rate of \$190.93 per day, together with reasonable attorneys fees, costs and all advances made by ADED or ADFA for taxes and insurance and other charges necessary to protect the Real Property. The rights of ADED and ADFA to foreclose the Mortgage have matured, and ADED and ADFA are entitled to a Decree of Foreclosure on the Real Property from this Court. Further, the interest of all Defendants herein are subordinate and inferior to the interest of ADED and ADFA in the Real Property and should be foreclosed herein.

COUNT II

26. On February 23, 2006 the City of Norphlet, Arkansas (the "City") issued and sold its \$2,485,000 City of Norphlet, Arkansas Industrial Development Revenue Bonds (Norphlet Chemical, Inc. Project) Series 2006 (the "Bonds") pursuant to a Loan Agreement between the City

and Norphlet to finance a portion of the costs of acquiring, constructing and equipping an industrial project in the City, a copy of which is attached hereto as Exhibit F.

27. On February 23, 2006, pursuant to a Trust Indenture between the City and FirsTrust Financial Services, Inc., as trustee for the owners of the Bonds ("Trustee"), the City transferred, assigned and pledged to Trustee all rights of the City in and to the Loan Agreement.

28. In connection with the issuance and sale of the Bonds, ADED guaranteed to Trustee the payment of the principal and interest on the Bonds as they became due and payable. A copy of ADED's Guaranty of Payment of Industrial Development Revenue Bonds is attached hereto as Exhibit G and made a part hereof by reference ("ADED Guaranty").

29. In connection with the issuance and sale of the Bonds Norphlet guaranteed to ADED reimbursement of the payment of all sums advanced by ADED pursuant to the ADED Guaranty ("Reimbursement Agreement"). A copy of the Reimbursement Agreement is attached hereto as Exhibit H and made a part hereof by reference.

30. Contemporaneously with the issuance and sale of the Bonds and for the purpose of securing the payment of all obligations of Norphlet under the Reimbursement Agreement, Norphlet executed, acknowledged and delivered to ADED a Mortgage and Security Agreement ("ADED Mortgage and Security Agreement") conveying the Real Property. The ADED Mortgage and Security Agreement was duly filed of record on February 24, 2006 in Book 2006 at page 2958, in the office of the Circuit Clerk and Ex-Officio Recorder of Union County, Arkansas. A copy of the ADED Mortgage and Security Agreement is attached hereto as Exhibit I and made a part hereof by reference.

31. As additional security for the payment of all obligations of Norphlet under the Reimbursement Agreement, the ADED Mortgage and Security Agreement granted to ADED a valid and enforceable first security interest in all furniture, fixtures, machinery, equipment and other personal property (collectively, the "Personal Property") of Norphlet.

32. To perfect the security interest described in the ADED Mortgage and Security Agreement, ADED filed the required financing statement in the office of the Secretary of State of the State of Arkansas on February 23, 2006 as Instrument No. 7128143981, a copy of which is attached hereto as Exhibit J and made a part hereof by reference.

33. Defendant, Norphlet, is in default under the terms and conditions of the Loan Agreement and Bonds by having failed to pay the principal and interest payments on the Bonds to the Trustee as required by the terms and conditions of the Loan Agreement and Bonds.

34. Pursuant to the terms and conditions of the ADED Guaranty, ADED has been required to pay to Trustee past due and unpaid principal and interest payments on the Bonds in the amount of \$510,372.23. ADED is subrogated to all rights of the Trustee and the owners of the Bonds in and to the Loan Agreement and Bonds.

35. Pursuant to the terms and conditions of the Reimbursement Agreement, ADED demanded reimbursement by Norphlet of the principal and interest payments made by ADED to Trustee in accordance with the ADED Guaranty Agreement. Norphlet has failed and refused to reimburse ADED.

36. As a result of the default of Norphlet and pursuant to the provisions of the Reimbursement Agreement, Loan Agreement and ADED Mortgage and Security Agreement, ADED

does hereby declare the total amount of the Bonds now outstanding in the current amount of \$1,855,000 as due and payable.

37. As of the date of the filing of this Complaint, there is past due and owing by Norphlet the sum of \$2,365,372.23 together with interest accruing at the rate reflected in the Bonds from the date of the filing of this Complaint until paid.

38. ADED, pursuant to an Intercreditor Agreement between ADED and ADFA dated September 22, 2006, a copy of which is attached hereto as Exhibit E and made a part hereof, participates *pari passu* in this litigation with ADFA and in the net proceeds derived by ADED and ADFA from this cause of action.

39. By virtue of the default in the payment required of Defendant, Norphlet, pursuant to the Loan Agreement, Bonds and Reimbursement Agreement, ADED and ADFA are entitled to a judgment against Norphlet in the amount of \$2,365,372.23, bearing interest at the rate reflected in the Loan Agreement and Bonds, together with reasonable attorneys' fees, costs, any and all advances made by ADED and ADFA for the payment of taxes, insurance and other charges necessary to protect the Real Property and Personal Property described in the ADED Mortgage and Security Agreement.

40. ADED and ADFA are entitled to foreclosure of the ADED Mortgage and Security Agreement and the sale of the Real Property pursuant to orders of the Court, possession of all Personal Property described in the ADED Mortgage and Security Agreement for disposal pursuant to the orders of the Court and the disposition of the proceeds from the sale of the Real Property and Personal Property pursuant to the Intercreditor Agreement. Further, the interests of all Defendants

herein are subordinate and inferior to the interest of ADFA and ADED in the Real Property and Personal Property and should be foreclosed herein.

COUNT III

41. On or about September 26, 2006, for valuable consideration, and in accordance with the Loan Agreement between ADFA and Norphlet Chemical, Inc. ("Norphlet"), Norphlet executed that certain Secured Promissory Note (the "Secured Note") in the amount of \$750,000.00 bearing interest as set forth in said Secured Note, a copy of which is attached hereto as Exhibit K and made a part hereof. By the terms of the Secured Note, Norphlet agreed to pay an additional sum as attorneys' fees in the event the Secured Note should be placed in the hands of an attorney for collection.

42. For the purpose of securing payment of the Secured Note, Norphlet executed, acknowledged and delivered to ADFA an Arkansas Mortgage with Security Interest and Absolute Assignment of Rents and Leases (including future advances) (the "ADFA Mortgage and Security Agreement") conveying the Real Property (as previously described herein) lying in Union County, Arkansas. The ADFA Mortgage and Security Agreement was duly filed of record in Union County, Arkansas on September 27, 2006 in Book 2006 at page 16703, in the office of the Circuit Clerk and Ex-Officio Recorder of Union County, Arkansas. A copy of the ADFA Mortgage and Security Agreement is attached hereto as Exhibit L and made a part hereof by reference.

43. As additional security for the payment of all obligations of Norphlet evidenced by the Secured Note, the ADFA Mortgage and Security Agreement granted to ADFA a valid and enforceable security interest in all machinery, appliances, materials, equipment and furnishings of Norphlet purchased from the proceeds of the Bonds or Secured Note.

44. To perfect the security interest described in the ADFA Mortgage and Security Agreement, ADFA filed the required financing statement in the office of the Secretary of State of Arkansas on September 26, 2006 as Instrument No. 7128839366, a copy of which is attached hereto as Exhibit M and made a part hereof by reference.

45. ADED, pursuant to an Intercreditor Agreement between ADED and ADFA dated September 22, 2006, a copy of which is attached hereto as Exhibit E and made a part hereof, participates *pari passu* in this litigation with ADFA and in the net proceeds derived by ADED and ADFA from this cause of action.

46. Payment under the Secured Note is in default and although demand for payment has been made, the indebtedness evidenced by the Secured Note remains past due and unpaid.

47. Pursuant to the maturity acceleration provision of the Secured Note, ADED and ADFA elect to declare the entire balance, the principal and accrued interest, on the Secured Note fully due and payable.

48. As of the date of the filing of the Complaint, there is past due and owing under the Secured Note principal in the amount of \$750,000.00, and accrued but unpaid interest in the amount of \$148,156.36, interest accruing at the rate of \$171.88 per day from the date of the filing of this Complaint until paid, expenses incurred in insuring the Real Property in the amount of \$15,782.37 and expenses incurred in preserving the Real Property in the amount of \$11,700.49.

49. By virtue of the default in the Secured Note by Norphlet, pursuant to the Secured Note and ADFA Mortgage and Security Agreement, ADED and ADFA are entitled to a judgment against Norphlet in the amount of \$926,763.06, bearing interest at the rate reflected in the Secured Note, together with a reasonable attorneys' fee, costs, any and all advances made by ADED and

ADFA for payment of taxes, insurance and other charges necessary to protect the Real Property and Personal Property. The rights of ADED and ADFA to foreclose the ADFA Mortgage and Security Agreement have matured, and ADED and ADFA are entitled to a Decree of Foreclosure on the Real Property and Personal Property from this Court. Further, the interest of all Defendants herein are subordinate and inferior to the interest of ADED and ADFA in the Real Property and Personal Property and should be foreclosed herein.

50. Defendant System Contracting Corporation is made a defendant herein to give it notice of the filing of this action and an opportunity to assert any claim it may have against the Real Property. This defendant may assert a mortgage on the Real Property by virtue of a mortgage dated May 22, 2006, recorded as Mortgage 2006-8540. Any and all claims of System Contracting Corporation against the other parties and the Real Property are subject to, inferior to and subordinate to the interest of ADED and ADFA and should be foreclosed herein.

51. Defendant Phoenix Equipment Corporation is made a defendant herein to give it notice of the filing of this action and an opportunity to assert any claim it may have against the Real Property and Personal Property. This defendant may assert a security interest in Personal Property pursuant to financing statements filed on April 4, 2004 as Instrument No. 51271760938 with the Secretary of State of the State of Arkansas and as UCC 2005-68 in the office of the Circuit Clerk and Ex-Officio Recorder of Union County, Arkansas, refiled by document filed for record on April 7, 2005, recorded as Deed 2005-3944. Any and all claims of Phoenix Equipment Corporation against the other parties and the Real Property and Personal Property are subject to, inferior to and subordinate to the interest of ADED and ADFA and should be foreclosed.

52. Defendant The Sherwin-Williams Company is made a defendant herein to give it notice of the filing of this action and an opportunity to assert any claim it may have against the Real Property. This defendant may assert a judgment lien on the Real Property by virtue of a Judgment dated January 9, 2008 and recorded as Judgment 2008-319 in the office of the Circuit Clerk and Ex-Officio Recorder of Union County, Arkansas. Any and all claims of The Sherwin-Williams Company against the other parties and the Real Property and Personal Property are subject to, inferior to and subordinate to the interest of ADED and ADFA and should be foreclosed.

53. Defendant ESCO Electrical Services, Inc. is made a defendant herein to give it notice of the filing of this action and an opportunity to assert any claim it may have against the Real Property. This defendant may assert a judgment lien on the Real Property by virtue of a Judgment dated January 25, 2008 as recorded as Judgment 2008-0702 in the office of the Circuit Clerk and Ex-Officio Recorder of Union County, Arkansas. Any and all claims of ESCO Electrical Services, Inc. against the other parties and the Real Property and Personal Property are subject to, inferior to and subordinate to the interest of ADED and ADFA and should be foreclosed.

54. Defendant Consolidated Electrical Distributors, Inc. is made a defendant herein to give it notice of the filing of this action and an opportunity to assert any claim it may have against the Real Property. This defendant may assert a judgment lien on the Real Property by virtue of a Judgment dated April 7, 2008 as recorded as Judgment 2008-2656 in the office of the Circuit Clerk and Ex-Officio Recorder of Union County, Arkansas. Any and all claims of Consolidated Electrical Distributors, Inc. against the other parties and the Real Property and Personal Property are subject to, inferior to and subordinate to the interest of ADED and ADFA and should be foreclosed.

55. Defendant Michael W. Murphy II is made a defendant herein to give him notice of the filing of this action and an opportunity to assert any claim he may have against the Real Property. This defendant may assert a judgment lien on the Real Property by virtue of a Judgment dated November 10, 2008 as recorded in Cause No. 2008-0288 in the office of the Circuit Clerk and Ex-Officio Recorder of Union County, Arkansas. Any and all claims of Michael W. Murphy II against the other parties and the Real Property and Personal Property are subject to, inferior to and subordinate to the interest of ADED and ADFA and should be foreclosed.

56. Defendant Trac-Work, Inc. is made a defendant herein to give it notice of the filing of this action and an opportunity to assert any claim it may have against the Real Property. Trac-Work, Inc. may assert an interest in the Real Property by virtue of a suit recorded in the Sixth Circuit Court of Union County, Arkansas, Civil Division, as Cause No. 2007-0241, styled *Trac-Work, Inc. v. Norphlet Chemical, Inc.* filed on June 27, 2007. Any and all claims of Trac-Work, Inc. on the Real Property and Personal Property by virtue of the aforementioned cause of action is subject to, inferior to and subordinate to the interest of ADED and ADFA and should be foreclosed.

57. Defendant Liberty Supply, Inc. is made a defendant herein to give it notice of the filing of this action and an opportunity to assert any claim it may have against the Real Property. Liberty Supply, Inc. may assert an interest in the Real Property by virtue of a suit recorded in the Sixth Circuit Court of Union County, Arkansas, Civil Division, as Cause No. 2007-0388, styled *Liberty Supply, Inc. v. Norphlet Chemical, Inc.* filed on October 23, 2007. Any and all claims of Liberty Supply, Inc. on the Real Property or Personal Property by virtue of the aforementioned cause of action is subject to, inferior to and subordinate to the interest of ADED and ADFA and should be foreclosed.

58. Defendant Rental Service Corporation is made a defendant herein to give it notice of the filing of this action and an opportunity to assert any claim it may have against the Real Property. Rental Service Corporation may assert an interest in the Real Property by virtue of a suit recorded in the Sixth Circuit Court of Union County, Arkansas, Civil Division, as Cause No. 2009-0100, styled *Rental Service Corporation v. Norphlet Chemical, Inc.* filed on March 2, 2009. Any and all claims of Rental Service Corporation on the Real Property or Personal Property by virtue of the aforementioned cause of action is subject to, inferior to and subordinate to the interest of ADED and ADFA and should be foreclosed.

59. Defendant Timberland Bank is made a defendant herein to give it notice of the filing of this action and an opportunity to assert any claim it may have against the Real Property and Personal Property. This defendant may assert a security interest in Personal Property pursuant to a financing statement filed on February 23, 2006 as Instrument No. 7128143981 with the Secretary of State of the State of Arkansas. Any and all claims of Timberland Bank against the other parties and the Real Property and Personal Property are subject to, inferior to and subordinate to the interest of ADED and ADFA and should be foreclosed.

60. Defendant Smackover State Bank is made a defendant herein to give it notice of the filing of this action and an opportunity to assert any claim it may have against the Real Property and Personal Property. This defendant may assert a security interest in Personal Property pursuant to a financing statement filed on October 6, 2006 as Instrument No. 712886241 with the Secretary of State of the State of Arkansas. Any and all claims of Smackover State Bank against the other parties and the Real Property and Personal Property are subject to, inferior to and subordinate to the interest of ADED and ADFA and should be foreclosed.

61. Defendant Rain For Rent is made a defendant herein to give it notice of the filing of this action and an opportunity to assert any claim it may have against the Real Property and Personal Property. This defendant may assert a security interest in Personal Property pursuant to a financing statement filed on March 14, 2007 as Instrument No. 7129314519 with the Secretary of State of the State of Arkansas. Any and all claims of Rain For Rent against the other parties and the Real Property and Personal Property are subject to, inferior to and subordinate to the interest of ADED and ADFA and should be foreclosed.

62. Defendant E-Tech, Inc. is made a defendant herein to give it notice of the filing of this action and an opportunity to assert any claim it may have against the Real Property. This defendant may assert a judgment lien on the Real Property by virtue of a Judgment filed in the office of the Circuit Clerk and Ex-Officio Recorder of Union County, Arkansas as Cause No. 2009-0339, originating as a Default Judgment in the District Court of Tulsa County, Oklahoma in Cause No. CJ-2007-8160. Any and all claims of E-Tech, Inc. against the other parties and the Real Property and Personal Property are subject to, inferior to and subordinate to the interest of ADED and ADFA and should be foreclosed.

63. The United States of America, acting by and through the United States Environmental Protection Agency, is made a defendant herein to give it notice of the filing of this action and an opportunity to assert any claim it may have against the Real Property and Personal Property. This defendant may assert a lien on the Real Property and Personal Property by virtue of a Notice of Statutory Federal Lien filed on September 23, 2009 with the Circuit Clerk and Ex Officio Recorder of Union County, Arkansas as Instrument No. 2009 R 007369, Transaction No. 14972. Any and all claims of this defendant against the other parties and the Real Property and Personal Property are

subject to, inferior to and subordinate to the interest of ADED and ADFA and should be foreclosed.

WHEREFORE, ADED and ADFA pray that this Court award them the following relief against the Defendants:

1. Judgment as to the allegations of Count I of this Complaint against Norphlet Chemical, Inc. in the total amount of \$1,614,189.08, with interest accruing thereon from and after the date of the filing of this Complaint at the rate of \$190.93 per day, plus a reasonable attorneys' fees, costs of the foreclosure case expended *pendent lite*, including, without limitation, the cost of abstract, advances for real estate taxes and insurance, expenses in preserving and preparing the Real Property and Personal Property for sale and all other reasonable incidental expenses, with all these expenses being secured by the Mortgage.

2. Judgment as to the allegations of Count II of this Complaint against Norphlet Chemical, Inc. in the total amount of \$2,365,372.23, together with interest to continue to accrue at the rate reflected in the Bonds, together with ADED and ADFA's costs, a reasonable attorneys' fee, and any advances made by ADED and ADFA for taxes, insurance or other charges necessary to protect the Real Property and Personal Property described in the ADED Mortgage and Security Agreement.

3. Judgment as to the allegations of Count III of this Complaint against Norphlet Chemical, Inc. in the total amount of \$926,763.06, together with interest from the date of the filing of this Complaint, at the rate of \$171.88 per day, together with ADFA's cost, a reasonable attorneys' fee, costs and any advances made by ADED or ADFA for taxes, insurance or other charges necessary to protect the Real Property and Personal Property described in the ADFA Mortgage and Security Agreement.

4. That the judgments herein awarded be declared to constitute by virtue of the Mortgage, ADED Mortgage and Security Agreement, ADFA Mortgage and Security Agreement and the Intercreditor Agreement a first lien on the Real Property superior to the interest of all defendants and other persons and entities.

5. That the judgments herein awarded by declared by virtue of the ADED Mortgage and Security Agreement, the ADFA Mortgage and Security Agreement and the Intercreditor Agreement to be the first lien on the Personal Property superior to the interest of all defendants and other persons and entities.

6. That the Personal Property be delivered to ADED and ADFA for sale pursuant to Arkansas law with the proceeds, after payment of the costs of preparing the items for sale and sale expenses including fees, being a credit against the judgments herein granted. Thereafter, the Real Property should be sold at a foreclosure sale with the proceeds of such sale being applied to the costs of this proceeding and the balance as a credit against the judgments rendered in favor of ADED and ADFA herein. In the event any excess exists, said excess shall be paid to others as interest may appear after entry of a proper Court Order.

7. That the sales of the Personal Property and the Real Property constitute a perpetual bar to all right, title, interest, equity, estate or right to redeem of the Defendants and all other persons, including any and all rights of possibility of dower, curtesy and homestead.

8. That a Commissioner be appointed to make said sale. ADED and ADFA nominate the Clerk of this Court to serve as Commissioner.

9. That the purchaser at the sale of the Real Property and Personal Property be declared to have a right to immediate possession thereof and be given immediate Writ of Assistance executed by the Clerk of this Court to enforce delivery of said possession.

10. That in the event the sale of the Real Property and the Personal Property do not generate sufficient amounts to satisfy the judgments prayed for herein, the Court authorize garnishment and execution to further aid collection of said indebtedness.

11. That a receiver be appointed *pendent lite* to protect and preserve the Real Property and Personal Property.

12. That ADED and ADFA receive any and all other proper relief to which they may be entitled.

Respectfully submitted,


ARKANSAS DEPARTMENT OF ECONOMIC
DEVELOPMENT

and

ARKANSAS DEVELOPMENT FINANCE
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